

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

ANGELO FEARS,	:	
Petitioner,	:	Case No. 1:01-CV -0183
-vs-	:	JUDGE WALTER H. RICE
	:	MAGISTRATE JUDGE MERZ
MARGARET A. BAGLEY, Warden,	:	
Respondent.	:	

PETITIONER'S WITHDRAW OF TENTH CLAIM FOR RELIEF

Comes now the Petitioner, by and through counsel, and withdraws his Tenth Claim for Relief all for the reasons more fully set forth in the Memorandum in Support.

MEMORANDUM IN SUPPORT

Petitioner, in his Tenth Ground for Relief set forth the following proposition:

The execution of a mentally retarded individual constitutes cruel and unusual punishment in violation of petitioner's rights under the Eighth and Fourteenth Amendments. (Amend. Petition at p. 63).

As footnote 31 to the Amended Petition indicated:

Petitioner did not exhaust this claim in his direct appeal, nor in any post-conviction or App. R. 26/*Murnahan* petition, but will be seeking a stay and abeyance of this Habeas action, to return to state court to begin that exhaustion process.

Petitioner then started to investigate the efficacy of returning to state court to exhaust this claim and in speaking with various professionals who were either consulted in Petitioner's case at the levels below the federal level, or who were actually utilized at various stages of this proceeding below the federal level, there was an insufficient basis upon which to sustain Petitioner's burden pursuant to the *Lott* decision and thus the efforts to return to state court for exhaustion purposes were abandoned.

Thus the Petitioner having failed to exhaust this claim in State court now withdraws that claim for consideration by this court in rendering its decision on the merits of his amended habeas petition.

Respectfully submitted:

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By: s/Lawrence J. Greger
Trial Attorney for Petitioner Fears

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Withdraw of Tenth Claim was electronically served on all parties at the time same was electronically filed with the court.

s/Lawrence J. Greger
Lawrence J. Greger